1962

Western Machinery Co. v. H. K. Riddle and E. J. Mayhew : Brief of Appellant

Utah Supreme Court

Moyle & Moyle; Attorneys for Respondent and Cross-Appellant;

IN THE SUPREME COURT
of the
STATE OF UTAH

WESTERN MACHINERY COMPANY,
a Corporation,
Appellant,

vs.

H. K. RIDDLE and E. J. MAYHEW,
Respondents and Cross Appellants.

...me Court, Utah

No. 9513 9611

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court for
Salt Lake County, Utah
HONORABLE STUART M. HANSEN, JUDGE

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WESTERN MACHINERY COMPANY,
a Corporation,
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Respondents and Cross Appellants.

No. 9513

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is an action to recover moneys due under an agreement for the rental of heavy machinery, rented by the respondents from the appellant.

DISPOSITION IN LOWER COURT

The Lower Court, sitting without a Jury, found for the appellant but in computing the damages, allowed an offset to the rentals found to be due which appellant claims is improper.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the judgment of the Lower Court assessing damages.

STATEMENT OF FACTS

In this case Plaintiff could not obtain service of process on the defendant, H. K. Riddle and the judgment is against E. J. Mayhew, only.

On January 29, 1960, the respondents entered into a written rental agreement with the Appellant whereby they agreed ot rent a used Allis Chalmers H D - 6 G Diesel 1½ cubic yard Tractor Shovel, with Tractomotive at the agreed rental price of $511.00 per month, the rental payments to start November 16, 1959. (Plaintiff's Exhibit 1, Record page 2.) The evidence shows that the Respondents paid only $1,000.00 rental and the Appellant repossessed the machinery in April of 1961. The Court found that under the agreement the rental due plus the costs of repossession was $7,393.34. The appellant then repossessed the machinery at a cost of $804.68 for repairs and sold the machinery for $6,400.00. None of these facts are disputed. The evidence is that at the time the agreement was entered into the fair value of the machinery was $10,900.00.

The Court, after making these findings assessed the damages by taking the amount of rentals due, the cost of repossessing and the cost of repair and subtracting from this amount the sum realized on the resale of the machinery and entered judgment for the plaintiff in the sum of $1,798.52 and attorneys fees in the sum of $500.00.

ARGUMENT

Point 1. *The contract entered into is a rental agreement and the damages assessed should be the unpaid rental.*

This is an action based on a written contract wherein the amount to be recovered was conclusively proved. This is an action in law, not equity. Neither the answer or any of the pleadings in the case raise any defense equitable in nature. The pleadings do not raise any question of any claim for a set-off on the rentals due. Any such claim would be an affirmative defense which would under Rule 8, Subsection C, Utah Rules of Civil Procedure, have to be plead. This Rule provides:

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estopple, failure of consideration, fraud illegality, injury by fellow servant, lacks license, *payment,* release, res judicata, statute of frauds, statute of limitations, waiver, *and any other matter constituting an avoidance or affirmative defense.* (Emphasis ours).

So, too, under this rule any possible equitable defense would have to have been plead in order to place the issue before the Court.

The Court in its memorandum decision (Page 36 of the Record) says in part:

2. "The Court concludes that the agreement between the parties was a rental agreement *but that equity* compels the Court to find as follows: (Emphasis ours).

The Court substitutes a new and different contract, for the one entered into between the parties, without any request from either party so to do, and without the pleading of an affirmtaive defense and contrary to Rule 8, Sub-section C, Utah Rules of Civil Procedure. (Supra).

The principles of law applicable in the proper decisions of this case are so elementary that we have been unable to find a case which even nearly approximates the conclusions of the Court in the granting of damages.

These principles are:

(a) This is an action for a money judgment under a written contract, an action in law.

(b) There is nothing in the pleadings which can in any manner be construed as giving the Court equity jurisdiction.

(c) There is no allegation in the answer or in any other of the pleadings claiming a set-off of any kind, to grant such relief it must be plead.

(d) The Court has re-written a valid contract entered into freely among the parties and has substituted its judgment as to what the provisions should have been.

Point 2. *There is no foundation from the evidence or from the agreement upon which the Trial Court could base its finding assessing damages.*

From the Record in this case it difficult for us to determine under what theory the trial Court felt that by his decision he was serving equity. The contract was freely and openly entered into between business men. The Respondents at the time they

entered into the contract knew the obligation they were subjecting themselves to. The machinery was delivered to them and they had full use of it from November 1959 until April 1961. Because of their possession and use the machinery depreciated from a value of $10,900.00 to $6,400.00 with the added cost of $803.00 to recondition it for sale. For all of this they paid a sum of $1,000.00. The machinery could have been returned at any time. Under the Court's decision for all of this they are to pay in total the sum of $2,798.52.

If there be any equities in this matter they surely do not lie with the Respondents. Under the Court's decision the appellant is the one who is to suffer through no fault on its part. It performed its part of the contract and asks only that the Respondents perform their part of the contract.

It is respectfully submitted that the Trial Court should be ordered by this Court to enter judgment for appellant in the sum of $7,393.34.

Respectfully submitted,

CRITCHLOW, WATSON & WARNOCK
Attorneys for Appellant